

Picketing, Contempt Proceedings; Right to Trial by Jury; Clayton Act: Section 22

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Repository Citation

Alfred G. Goldberg, *Picketing, Contempt Proceedings; Right to Trial by Jury; Clayton Act: Section 22*, 12 Marq. L. Rev. 333 (1928).
Available at: <http://scholarship.law.marquette.edu/mulr/vol12/iss4/16>

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Picketing, Contempt Proceedings; Right to Trial by Jury; Clayton Act: Section 22.

In the recent trial of the twenty-six strikers of the Allen-A Hosiery Company, the strikers were given a jury trial in proceedings for contempt for violation of an injunction. All of the accused were acquitted.¹

This is the first time that a jury trial has been granted in contempt proceedings. The right to trial by jury in proceedings for contempt in violating an order of court by an act which is also a criminal offense is provided for by section 22 of the Clayton Act.

The constitutionality of this section of the Clayton Act was established in the Michaelson case² decided in the October term in 1924.

The principal question presented in the Michaelson case is whether the provision of the Clayton Act of October 15, 1914³ requiring a jury trial in certain kinds of contempt is constitutional. A subordinate question presented is whether the provision for a jury trial is mandatory or permissive.

In delivering the opinion in the Michaelson case, Justice Southerland says:

"The provision for trial by jury upon demand, as we shall presently show, is mandatory; and the question to be answered is whether it infringes any power of the courts vested by the constitution and unalterable by congressional legislation. . . . We think the statute reasonably construed relates exclusively to criminal contempts. *The act or thing charged must also be of such character as also to constitute a crime. Prosecution must be in conformity with the practice in criminal case.* Upon conviction the accused is to be punished by fine or imprisonment, or both. True, the fine may be paid to the United States or to the complainant, or divided among the parties injured by the Act, as the court may direct, *but that does not alter the essential nature of the proceeding contemplated by the statute.* The discretion given the court in this respect is incidental and subordinate to the dominating purpose of the proceeding, which is punitive, to vindicate the authority of the court and punish the act of disobedience as a public wrong.⁴ If the contempt savors of criminality and the sentence is penal, that, according to the books, appears to be enough.⁵ It is contended that the statute materially interferes with the inherent power of the courts, and is therefore invalid. . . . The statute now under review merely regulates the power. It is of narrow scope, dealing with the single class with the act or thing constituting the contempt

¹ *Allen-A Hosiery Co. v. Branch No. 6 of the Am. Fed. of Full Fashioned Hosiery Workers Union, et al.*

² *Michaelson v. U.S. Ex Rel. Chicago, St. Paul, Minn. & Omaha Railway Company*, 266 U.S. 162, 69 L. Ed. 163.

³ Clayton Act of October 15, 1914, Chap. 323, 38 Stats. at L. 738, 739, Sections 21, 22, Compiled Stats. Sections 1245 a, 1245 b, 6 Fed. Stats. Ann. 2nd ed. pp. 141, 142.

⁴ See *Re: Merchants Stock and Grain Co.* 223 U.S. 639, 641, 56 L. Ed. 584, 585, 32 Sup. Ct. Rep. 339; *Re: Christianson Eng. Co.* 194 U.S. 458, 461, 48 L. Ed. 1072, 1075, 24 Sup. Ct. Rep. 729.

⁵ *Wellesley's case*, 2 Russ. & M. 639, 667, 39 Eng. Reprint 538.

is a crime in the ordinary sense. . . . But the simple question presented is whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. . . . The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information, is that in the latter the act complained of is the violation of a law, and in the former the violation of a decree. In the case of the latter the accused has a constitutional right of trial by jury; while in the former he has not. The statutory extension of this constitutional right to a class of contempts which are properly described as criminal offenses does not, in our opinion invade the powers of the courts as intended by the constitution, or violate that instrument in any other way."

The court further says in regard to whether the jury provision of the statute is mandatory or permissive. "The intent of Congress in adopting the provision was to give to the accused a right of trial by jury; not merely to vest authority in the judge to call a jury at his discretion."⁶

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⁶ See *Rock Island County v. U.S.*, 4 Wall 435, 446, 447, 18 L. Ed. 419, 422, 423.